

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 829**

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**Introduced by Assembly Member Caballero**

*(Coauthors: Assembly Members Coto, Fletcher, Galgiani, Jeffries,  
Lieu, and Portantino)*

*(Coauthors: Senators Ashburn, Calderon, and Correa)*

February 26, 2009

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An act to *amend Sections 17276, 17276.9, 17276.10, 24416, 24416.9, 24416.10, and 25128.5 of, and to add Section 6377 to, and to add and repeal Sections 17053.91 and 23649.1 of,* the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 829, as amended, Caballero. Sales and use tax: personal and corporate income tax: ~~manufacturers' credit and exemption tax.~~

~~(1) The~~

*The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and provides various exemptions from the taxes imposed by that law.*

*This bill would exempt from a specified portion of those taxes, for calendar years beginning on or after January 1, 2013, and before January 1, 2020, the gross receipts from the sale of, and the storage, use, or other consumption of, sustainable development equipment investments of*

tangible personal property purchased for use by a qualified person to be used in manufacturing or other processes, as specified, and tangible personal property purchased by a qualified person and used primarily during the research and development process for qualified research, as defined.

This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes.

~~(2) The Personal Income Tax Law and the Corporation Tax Law authorizes various credits against the taxes imposed by those laws.~~

~~This bill would allow a credit in amount equal to a specified portion of the amount of sales tax reimbursement paid to a retailer or use tax paid on a purchase of tangible personal property with respect to taxes paid on transactions occurring between January 1, 2010, and January 1, 2013, that are imposed under the Sales and Use Tax Law for the sale of, or the storage, use, or other consumption in this state of, tangible personal property purchased for use by a qualified person in manufacturing, processing, refining, fabricating, or recycling of property, tangible personal property purchased for use by a contractor for a specified purpose, sustainable development equipment investments of tangible personal property purchased for specified use, and tangible personal property used, but not consumed, primarily during the research and development process for qualified research, as defined. The credit would be applied in equal amounts over three successive taxable years beginning with the first taxable year beginning on or after January 1, 2013.~~

*Existing law allows individual and corporate taxpayers to utilize net operating losses and carryovers of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law allows net operating losses attributable to taxable years beginning on or after January 1, 2011, to be carrybacks to each of the preceding 2 taxable years.*

*This bill would delete those net operating loss carryback provisions.*

*The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business*

*activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to make an irrevocable annual election to have that income apportioned in accordance with a single sales factor formula, except as provided.*

*This bill would require the election to be for 84 months.*

~~(3) This~~

*This bill would take effect immediately as a tax levy.*

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. It is the intent of the Legislature to enact a  
2 competitive tax policy for manufacturers by providing for partial  
3 exemptions from state sales and use taxes for the sale of and the  
4 storage, use, or other consumption of specified manufacturing  
5 equipment and for sustainable manufacturing and research and  
6 development equipment investments used in the manufacturing  
7 process.

8 SEC. 2. Section 6377 is added to the Revenue and Taxation  
9 Code, to read:

10 6377. On and after January 1, 2013, *and before January 1,*  
11 *2020*, there are exempted from the taxes imposed by this part the  
12 gross receipts from the sale of, and the storage, use, or other  
13 consumption in this state of, all of the following:

14 (1) Tangible personal property purchased by a qualified person  
15 for use primarily in any stage of the manufacturing, processing,  
16 refining, fabricating, or recycling of property, beginning at the  
17 point any raw materials are received by the qualified person and  
18 introduced into the process and ending at the point at which the  
19 manufacturing, processing, refining, fabricating, or recycling has  
20 altered property to its completed form, including packaging, if  
21 required.

22 (2) Tangible personal property purchased for use by a contractor  
23 purchasing that property for use in the performance of a  
24 construction contract for the qualified person who will use the  
25 property as an integral part of the manufacturing, processing,  
26 refining, fabricating, or recycling process, or as a storage facility  
27 for use in connection with the manufacturing process.

(3) Sustainable development equipment investments of tangible personal property purchased by a qualified person for use primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered property to its completed form, including packaging, if required.

(4) Tangible personal property ~~used~~ *purchased by a qualified person for use* primarily during the research and development process on qualified research.

(b) For purposes of this section:

(1) “Fabricating” means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) “Manufacturing” means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) “Primarily” means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(4) “Process” means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person’s manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified person’s manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

1 (5) "Processing" means the physical application of the materials  
2 and labor necessary to modify or change the characteristics of  
3 property.

4 (6) "Qualified person" means either of the following:

5 (A) A person who is *primarily* engaged in those lines of business  
6 described in Codes 3111 to 3399, inclusive, or 5112 of the North  
7 American Industrial Classification System (NAICS) published by  
8 the United States Office of Management and Budget (OMB), 2002  
9 edition.

10 (B) An affiliate of a person described in subparagraph (A)  
11 provided that the affiliate is a member of the qualified person's  
12 unitary group for which a combined report is required to be filed  
13 under Article 1 (commencing with Section 25101) of Chapter 17  
14 of Part 11.

15 (7) "Qualified research" means research that meets the  
16 requirements of Section 174 of the Internal Revenue Code.

17 (8) "Refining" means the process of converting a natural  
18 resource to an intermediate or finished product.

19 (9) "Sustainable development equipment" means qualified  
20 manufacturing or research and development equipment that meets  
21 any of the following:

22 (A) Is consistent with meeting the goals and objectives of  
23 compliance with greenhouse gas emissions standards as set forth  
24 in Division 25.5 (commencing with Section 38500) of the Health  
25 and Safety Code.

26 (B) Promotes the reduction of wasteful, inefficient, unnecessary,  
27 or uneconomic uses of energy.

28 (C) Encourages the utilization of cost-effective water use  
29 efficiency practices to curtail the waste of water and to ensure that  
30 water use does not exceed reasonable needs.

31 (D) Promotes the utilization of recycled or reusable materials  
32 in the manufacturing process.

33 (10) "Tangible personal property" includes, but is not limited  
34 to, all of the following:

35 (A) Machinery and equipment, including component parts and  
36 contrivances such as belts, shafts, moving parts, and operating  
37 structures.

38 (B) Equipment or devices used or required to operate, control,  
39 regulate, or maintain the machinery and equipment, including,  
40 without limitation, computers, data processing equipment, and

1 computer software, together with all repair and replacement parts  
2 with a useful life of one or more years, whether purchased  
3 separately or in conjunction with a complete machine and  
4 regardless of whether the machine or component parts are  
5 assembled by the qualified person or another party.

6 (C) Property used in pollution control that meets standards  
7 established by this state or any local or regional governmental  
8 agency within this state.

9 (D) Special purpose buildings and foundations used as an  
10 integral part of the manufacturing, processing, refining, or  
11 fabricating process, or that constitute a research or storage facility  
12 used during the manufacturing process.

13 (E) Fuels used or consumed in the manufacturing process.

14 (11) "Tangible personal property" does not include any of the  
15 following:

16 (A) Consumables with a normal useful life of less than one year,  
17 except as provided in subparagraph (E) of paragraph (10).

18 (B) Furniture, inventory, and equipment used in the extraction  
19 process, or equipment used to store finished products that have  
20 completed the manufacturing process.

21 (C) Buildings or components of buildings used solely for  
22 warehousing purposes after completion of the manufacturing  
23 process.

24 (D) Tangible personal property used primarily in administration,  
25 general management, or marketing.

26 (c) No exemption shall be allowed under this section unless the  
27 purchaser furnishes the retailer with an exemption certificate,  
28 completed in accordance with any instructions or regulations as  
29 the board may prescribe.

30 (d) Notwithstanding any provision of the Bradley-Burns  
31 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing  
32 with Section 7200)) or the Transactions and Use Tax Law (Part  
33 1.6 (commencing with Section 7251)), the exemption established  
34 by this section shall not apply with respect to any tax levied by a  
35 county, city, or district pursuant to, or in accordance with, either  
36 of those laws.

37 (e) (1) Notwithstanding subdivision (a), the exemption provided  
38 by this section shall not apply to any sale or use of property that,  
39 within one year from the date of purchase, is either removed from  
40 California, converted from an exempt use under subdivision (a)

1 to some other use not qualifying for the exemption, or used in a  
2 manner not qualifying for the exemption.

3 (2) Notwithstanding subdivision (a), the exemption established  
4 by paragraphs (1) and (2) of subdivision (a) shall not apply with  
5 respect to any tax levied pursuant to Sections 6051.2, 6051.5,  
6 6051.7, 6201.2, 6201.5, or 6201.7 or pursuant to Section 35 of  
7 Article XIII of the California Constitution.

8 (3) Notwithstanding subdivision (a), the exemption established  
9 by paragraphs (3) and (4) of subdivision (a) shall not apply with  
10 respect to any tax levied pursuant to Section 6051.2, 6051.5,  
11 6201.2, or 6201.5 or pursuant to Section 35 of Article XIII of the  
12 California Constitution.

13 (f) If a purchaser certifies in writing to the seller that the property  
14 purchased without payment of the tax will be used in a manner  
15 entitling the seller to regard the gross receipts from the sale as  
16 exempt from the sales tax, and within one year from the date of  
17 purchase, the purchaser (1) removes that property outside  
18 California, (2) converts that property for use in a manner not  
19 qualifying for the exemption, or (3) uses that property in a manner  
20 not qualifying for the exemption, the purchaser shall be liable for  
21 payment of sales tax, with applicable interest, as if the purchaser  
22 were a retailer making a retail sale of the property at the time the  
23 property is so removed, converted, or used, and the sales price of  
24 the property to the purchaser shall be deemed the gross receipts  
25 from that retail sale.

26 *SEC. 3. Section 17276 of the Revenue and Taxation Code is*  
27 *amended to read:*

28 17276. Except as provided in Sections 17276.1, 17276.2,  
29 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided  
30 by Section 172 of the Internal Revenue Code, relating to a net  
31 operating loss deduction, shall be modified as follows:

32 (a) (1) Net operating losses attributable to taxable years  
33 beginning before January 1, 1987, shall not be allowed.

34 (2) A net operating loss shall not be carried forward to any  
35 taxable year beginning before January 1, 1987.

36 (b) (1) Except as provided in paragraphs (2) and (3), the  
37 provisions of Section 172(b)(2) of the Internal Revenue Code,  
38 relating to the amount of carryovers, shall be modified so that the  
39 applicable percentage of the entire amount of the net operating  
40 loss for any taxable year shall be eligible for carryover to any

1 subsequent taxable year. For purposes of this subdivision, the  
2 applicable percentage shall be:

3 (A) Fifty percent for any taxable year beginning before January  
4 1, 2000.

5 (B) Fifty-five percent for any taxable year beginning on or after  
6 January 1, 2000, and before January 1, 2002.

7 (C) Sixty percent for any taxable year beginning on or after  
8 January 1, 2002, and before January 1, 2004.

9 (D) One hundred percent for any taxable year beginning on or  
10 after January 1, 2004.

11 (2) In the case of a taxpayer who has a net operating loss in any  
12 taxable year beginning on or after January 1, 1994, and who  
13 operates a new business during that taxable year, each of the  
14 following shall apply to each loss incurred during the first three  
15 taxable years of operating the new business:

16 (A) If the net operating loss is equal to or less than the net loss  
17 from the new business, 100 percent of the net operating loss shall  
18 be carried forward as provided in subdivision (d).

19 (B) If the net operating loss is greater than the net loss from the  
20 new business, the net operating loss shall be carried over as  
21 follows:

22 (i) With respect to an amount equal to the net loss from the new  
23 business, 100 percent of that amount shall be carried forward as  
24 provided in subdivision (d).

25 (ii) With respect to the portion of the net operating loss that  
26 exceeds the net loss from the new business, the applicable  
27 percentage of that amount shall be carried forward as provided in  
28 subdivision (d).

29 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
30 Code, the amount described in clause (ii) of subparagraph (B) shall  
31 be absorbed before the amount described in clause (i) of  
32 subparagraph (B).

33 (3) In the case of a taxpayer who has a net operating loss in any  
34 taxable year beginning on or after January 1, 1994, and who  
35 operates an eligible small business during that taxable year, each  
36 of the following shall apply:

37 (A) If the net operating loss is equal to or less than the net loss  
38 from the eligible small business, 100 percent of the net operating  
39 loss shall be carried forward to the taxable years specified in  
40 subdivision (d).



1 (B) If the net operating loss is greater than the net loss from the  
2 eligible small business, the net operating loss shall be carried over  
3 as follows:

4 (i) With respect to an amount equal to the net loss from the  
5 eligible small business, 100 percent of that amount shall be carried  
6 forward as provided in subdivision (d).

7 (ii) With respect to that portion of the net operating loss that  
8 exceeds the net loss from the eligible small business, the applicable  
9 percentage of that amount shall be carried forward as provided in  
10 subdivision (d).

11 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
12 Code, the amount described in clause (ii) of subparagraph (B) shall  
13 be absorbed before the amount described in clause (i) of  
14 subparagraph (B).

15 (4) In the case of a taxpayer who has a net operating loss in a  
16 taxable year beginning on or after January 1, 1994, and who  
17 operates a business that qualifies as both a new business and an  
18 eligible small business under this section, that business shall be  
19 treated as a new business for the first three taxable years of the  
20 new business.

21 (5) In the case of a taxpayer who has a net operating loss in a  
22 taxable year beginning on or after January 1, 1994, and who  
23 operates more than one business, and more than one of those  
24 businesses qualifies as either a new business or an eligible small  
25 business under this section, paragraph (2) shall be applied first,  
26 except that if there is any remaining portion of the net operating  
27 loss after application of clause (i) of subparagraph (B) of that  
28 paragraph, paragraph (3) shall be applied to the remaining portion  
29 of the net operating loss as though that remaining portion of the  
30 net operating loss constituted the entire net operating loss.

31 (6) For purposes of this section, the term “net loss” means the  
32 amount of net loss after application of Sections 465 and 469 of the  
33 Internal Revenue Code.

34 ~~(e) Section 172(b)(1) of the Internal Revenue Code, relating to~~  
35 ~~net operating loss carrybacks and carryovers and the years to which~~  
36 ~~the loss may be carried, is modified as follows:~~

37 ~~(1)~~

38 ~~(c) Net operating loss carrybacks shall not be allowed for any~~  
39 ~~net operating losses attributable to taxable years beginning before~~  
40 ~~January 1, 2011.~~

~~(2) A net operating loss attributable to taxable years beginning on or after January 1, 2011, shall be a net operating loss carryback to each of the two taxable years preceeding the taxable year of the loss in lieu of the number of years provided therein.~~

~~(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2011, and before January 1, 2012, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.~~

~~(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2012, and before January 1, 2013, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.~~

~~(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.~~

~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest loss, shall apply as provided.~~

~~(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2009.~~

~~(d) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “five taxable years” in lieu of “20 taxable years” except as otherwise provided in paragraphs (2) and (3).~~

~~(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “10 taxable years” in lieu of “20 taxable years.”~~

~~(2) For any taxable year beginning before January 1, 2000, in the case of a “new business,” the “five taxable years” in paragraph (1) shall be modified to read as follows:~~

~~(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.~~

1 (B) "Seven taxable years" for a net operating loss attributable  
2 to the second taxable year of that new business.

3 (C) "Six taxable years" for a net operating loss attributable to  
4 the third taxable year of that new business.

5 (3) For any carryover of a net operating loss for which a  
6 deduction is denied by Section 17276.3, the carryover period  
7 specified in this subdivision shall be extended as follows:

8 (A) By one year for a net operating loss attributable to taxable  
9 years beginning in 1991.

10 (B) By two years for a net operating loss attributable to taxable  
11 years beginning prior to January 1, 1991.

12 (4) The net operating loss attributable to taxable years beginning  
13 on or after January 1, 1987, and before January 1, 1994, shall be  
14 a net operating loss carryover to each of the 10 taxable years  
15 following the year of the loss if it is incurred by a taxpayer that is  
16 under the jurisdiction of the court in a Title 11 or similar case at  
17 any time during the income year. The loss carryover provided in  
18 the preceding sentence shall not apply to any loss incurred after  
19 the date the taxpayer is no longer under the jurisdiction of the court  
20 in a Title 11 or similar case.

21 (e) For purposes of this section:

22 (1) "Eligible small business" means any trade or business that  
23 has gross receipts, less returns and allowances, of less than one  
24 million dollars (\$1,000,000) during the taxable year.

25 (2) Except as provided in subdivision (f), "new business" means  
26 any trade or business activity that is first commenced in this state  
27 on or after January 1, 1994.

28 (3) "Title 11 or similar case" shall have the same meaning as  
29 in Section 368(a)(3) of the Internal Revenue Code.

30 (4) In the case of any trade or business activity conducted by a  
31 partnership or "S" corporation paragraphs (1) and (2) shall be  
32 applied to the partnership or "S" corporation.

33 (f) For purposes of this section, in determining whether a trade  
34 or business activity qualifies as a new business under paragraph  
35 (2) of subdivision (e), the following rules shall apply:

36 (1) In any case where a taxpayer purchases or otherwise acquires  
37 all or any portion of the assets of an existing trade or business  
38 (irrespective of the form of entity) that is doing business in this  
39 state (within the meaning of Section 23101), the trade or business  
40 thereafter conducted by the taxpayer (or any related person) shall

1 not be treated as a new business if the aggregate fair market value  
2 of the acquired assets (including real, personal, tangible, and  
3 intangible property) used by the taxpayer (or any related person)  
4 in the conduct of its trade or business exceeds 20 percent of the  
5 aggregate fair market value of the total assets of the trade or  
6 business being conducted by the taxpayer (or any related person).

7 For purposes of this paragraph only, the following rules shall apply:

8 (A) The determination of the relative fair market values of the  
9 acquired assets and the total assets shall be made as of the last day  
10 of the first taxable year in which the taxpayer (or any related  
11 person) first uses any of the acquired trade or business assets in  
12 its business activity.

13 (B) Any acquired assets that constituted property described in  
14 Section 1221(1) of the Internal Revenue Code in the hands of the  
15 transferor shall not be treated as assets acquired from an existing  
16 trade or business, unless those assets also constitute property  
17 described in Section 1221(1) of the Internal Revenue Code in the  
18 hands of the acquiring taxpayer (or related person).

19 (2) In any case where a taxpayer (or any related person) is  
20 engaged in one or more trade or business activities in this state, or  
21 has been engaged in one or more trade or business activities in this  
22 state within the preceding 36 months (“prior trade or business  
23 activity”), and thereafter commences an additional trade or business  
24 activity in this state, the additional trade or business activity shall  
25 only be treated as a new business if the additional trade or business  
26 activity is classified under a different division of the Standard  
27 Industrial Classification (SIC) Manual published by the United  
28 States Office of Management and Budget, 1987 edition, than are  
29 any of the taxpayer’s (or any related person’s) current or prior  
30 trade or business activities.

31 (3) In any case where a taxpayer, including all related persons,  
32 is engaged in trade or business activities wholly outside of this  
33 state and the taxpayer first commences doing business in this state  
34 (within the meaning of Section 23101) after December 31, 1993  
35 (other than by purchase or other acquisition described in paragraph  
36 (1)), the trade or business activity shall be treated as a new business  
37 under paragraph (2) of subdivision (e).

38 (4) In any case where the legal form under which a trade or  
39 business activity is being conducted is changed, the change in form  
40 shall be disregarded and the determination of whether the trade or

1 business activity is a new business shall be made by treating the  
2 taxpayer as having purchased or otherwise acquired all or any  
3 portion of the assets of an existing trade or business under the rules  
4 of paragraph (1) of this subdivision.

5 (5) “Related person” shall mean any person that is related to  
6 the taxpayer under either Section 267 or 318 of the Internal  
7 Revenue Code.

8 (6) “Acquire” shall include any gift, inheritance, transfer incident  
9 to divorce, or any other transfer, whether or not for consideration.

10 (7) (A) For taxable years beginning on or after January 1, 1997,  
11 the term “new business” shall include any taxpayer that is engaged  
12 in biopharmaceutical activities or other biotechnology activities  
13 that are described in Codes 2833 to 2836, inclusive, of the Standard  
14 Industrial Classification (SIC) Manual published by the United  
15 States Office of Management and Budget, 1987 edition, and as  
16 further amended, and that has not received regulatory approval for  
17 any product from the United States Food and Drug Administration.

18 (B) For purposes of this paragraph:

19 (i) “Biopharmaceutical activities” means those activities that  
20 use organisms or materials derived from organisms, and their  
21 cellular, subcellular, or molecular components, in order to provide  
22 pharmaceutical products for human or animal therapeutics and  
23 diagnostics. Biopharmaceutical activities make use of living  
24 organisms to make commercial products, as opposed to  
25 pharmaceutical activities that make use of chemical compounds  
26 to produce commercial products.

27 (ii) “Other biotechnology activities” means activities consisting  
28 of the application of recombinant DNA technology to produce  
29 commercial products, as well as activities regarding pharmaceutical  
30 delivery systems designed to provide a measure of control over  
31 the rate, duration, and site of pharmaceutical delivery.

32 (g) In computing the modifications under Section 172(d)(2) of  
33 the Internal Revenue Code, relating to capital gains and losses of  
34 taxpayers other than corporations, the exclusion provided by  
35 Section 18152.5 shall not be allowed.

36 (h) Notwithstanding any provisions of this section to the  
37 contrary, a deduction shall be allowed to a “qualified taxpayer” as  
38 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,  
39 and 17276.7.

1 (i) The Franchise Tax Board may prescribe appropriate  
2 regulations to carry out the purposes of this section, including any  
3 regulations necessary to prevent the avoidance of the purposes of  
4 this section through splitups, shell corporations, partnerships, tiered  
5 ownership structures, or otherwise.

6 (j) The Franchise Tax Board may reclassify any net operating  
7 loss carryover determined under either paragraph (2) or (3) of  
8 subdivision (b) as a net operating loss carryover under paragraph  
9 (1) of subdivision (b) upon a showing that the reclassification is  
10 necessary to prevent evasion of the purposes of this section.

11 (k) Except as otherwise provided, the amendments made by  
12 Chapter 107 of the Statutes of 2000 shall apply to net operating  
13 losses for taxable years beginning on or after January 1, 2000.

14 *SEC. 4. Section 17276.9 of the Revenue and Taxation Code is*  
15 *amended to read:*

16 17276.9. (a) Notwithstanding Sections 17276, 17276.1,  
17 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and  
18 Section 172 of the Internal Revenue Code, no net operating loss  
19 deduction shall be allowed for any taxable year beginning on or  
20 after January 1, 2008, and before January 1, 2010.

21 (b) For any net operating loss or carryover of a net operating  
22 loss for which a deduction is denied by subdivision (a), the  
23 carryover period under Section 172 of the Internal Revenue Code  
24 shall be extended as follows:

25 (1) By one year, for losses incurred in taxable years beginning  
26 on or after January 1, 2008, and before January 1, 2009.

27 (2) By two years, for losses incurred in taxable years beginning  
28 before January 1, 2008.

29 ~~(e) Notwithstanding subdivision (a), a net operating loss~~  
30 ~~deduction shall be allowed for carryback of a net operating loss~~  
31 ~~attributable to a taxable year beginning on or after January 1, 2011.~~

32 ~~(d)~~

33 (c) The provisions of this section shall not apply to a taxpayer  
34 with net business income of less than five hundred thousand dollars  
35 (\$500,000) for the taxable year. For purposes of this subdivision,  
36 business income means:

37 (1) Income from a trade or business, whether conducted by the  
38 taxpayer or by a passthrough entity owned directly or indirectly  
39 by the taxpayer. For purposes of this paragraph, the term  
40 “passthrough entity” means a partnership or an “S” corporation.

1 (2) Income from rental activity.

2 (3) Income attributable to a farming business.

3 *SEC. 5. Section 17276.10 of the Revenue and Taxation Code*  
4 *is amended to read:*

5 17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4,  
6 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss  
7 attributable to a taxable year beginning on or after January 1, 2008,  
8 shall be a net operating carryover to each of the 20 taxable years  
9 following the year of the loss, ~~and a net operating loss attributable~~  
10 ~~to a taxable year beginning on or after January 1, 2011, shall also~~  
11 ~~be a net operating loss carryback to each of the two taxable years~~  
12 ~~preceding the taxable year of loss.~~

13 *SEC. 6. Section 24416 of the Revenue and Taxation Code is*  
14 *amended to read:*

15 24416. Except as provided in Sections 24416.1, 24416.2,  
16 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss  
17 deduction shall be allowed in computing net income under Section  
18 24341 and shall be determined in accordance with Section 172 of  
19 the Internal Revenue Code, except as otherwise provided.

20 (a) (1) Net operating losses attributable to taxable years  
21 beginning before January 1, 1987, shall not be allowed.

22 (2) A net operating loss shall not be carried forward to any  
23 taxable year beginning before January 1, 1987.

24 (b) (1) Except as provided in paragraphs (2) and (3), the  
25 provisions of Section 172(b)(2) of the Internal Revenue Code,  
26 relating to the amount of carryovers, shall be modified so that the  
27 applicable percentage of the entire amount of the net operating  
28 loss for any taxable year shall be eligible for carryover to any  
29 subsequent taxable year. For purposes of this subdivision, the  
30 applicable percentage shall be:

31 (A) Fifty percent for any taxable year beginning before January  
32 1, 2000.

33 (B) Fifty-five percent for any taxable year beginning on or after  
34 January 1, 2000, and before January 1, 2002.

35 (C) Sixty percent for any taxable year beginning on or after  
36 January 1, 2002, and before January 1, 2004.

37 (D) One hundred percent for any taxable year beginning on or  
38 after January 1, 2004.

39 (2) In the case of a taxpayer who has a net operating loss in any  
40 taxable year beginning on or after January 1, 1994, and who

1 operates a new business during that taxable year, each of the  
2 following shall apply to each loss incurred during the first three  
3 taxable years of operating the new business:

4 (A) If the net operating loss is equal to or less than the net loss  
5 from the new business, 100 percent of the net operating loss shall  
6 be carried forward as provided in subdivision (e).

7 (B) If the net operating loss is greater than the net loss from the  
8 new business, the net operating loss shall be carried over as  
9 follows:

10 (i) With respect to an amount equal to the net loss from the new  
11 business, 100 percent of that amount shall be carried forward as  
12 provided in subdivision (e).

13 (ii) With respect to the portion of the net operating loss that  
14 exceeds the net loss from the new business, the applicable  
15 percentage of that amount shall be carried forward as provided in  
16 subdivision (d).

17 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
18 Code, the amount described in clause (ii) of subparagraph (B) shall  
19 be absorbed before the amount described in clause (i) of  
20 subparagraph (B).

21 (3) In the case of a taxpayer who has a net operating loss in any  
22 taxable year beginning on or after January 1, 1994, and who  
23 operates an eligible small business during that taxable year, each  
24 of the following shall apply:

25 (A) If the net operating loss is equal to or less than the net loss  
26 from the eligible small business, 100 percent of the net operating  
27 loss shall be carried forward to the taxable years specified in  
28 paragraph (1) of subdivision (e).

29 (B) If the net operating loss is greater than the net loss from the  
30 eligible small business, the net operating loss shall be carried over  
31 as follows:

32 (i) With respect to an amount equal to the net loss from the  
33 eligible small business, 100 percent of that amount shall be carried  
34 forward as provided in subdivision (e).

35 (ii) With respect to that portion of the net operating loss that  
36 exceeds the net loss from the eligible small business, the applicable  
37 percentage of that amount shall be carried forward as provided in  
38 subdivision (e).

39 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
40 Code, the amount described in clause (ii) of subparagraph (B) shall



1 be absorbed before the amount described in clause (i) of  
2 subparagraph (B).

3 (4) In the case of a taxpayer who has a net operating loss in a  
4 taxable year beginning on or after January 1, 1994, and who  
5 operates a business that qualifies as both a new business and an  
6 eligible small business under this section, that business shall be  
7 treated as a new business for the first three taxable years of the  
8 new business.

9 (5) In the case of a taxpayer who has a net operating loss in a  
10 taxable year beginning on or after January 1, 1994, and who  
11 operates more than one business, and more than one of those  
12 businesses qualifies as either a new business or an eligible small  
13 business under this section, paragraph (2) shall be applied first,  
14 except that if there is any remaining portion of the net operating  
15 loss after application of clause (i) of subparagraph (B) of paragraph  
16 (2), paragraph (3) shall be applied to the remaining portion of the  
17 net operating loss as though that remaining portion of the net  
18 operating loss constituted the entire net operating loss.

19 (6) For purposes of this section, “net loss” means the amount  
20 of net loss after application of Sections 465 and 469 of the Internal  
21 Revenue Code.

22 (c) For any taxable year in which the taxpayer has in effect a  
23 water’s-edge election under Section 25110, the deduction of a net  
24 operating loss carryover shall be denied to the extent that the net  
25 operating loss carryover was determined by taking into account  
26 the income and factors of an affiliated corporation in a combined  
27 report whose income and apportionment factors would not have  
28 been taken into account if a water’s-edge election under Section  
29 25110 had been in effect for the taxable year in which the loss was  
30 incurred.

31 ~~(d) Section 172(b)(1) of the Internal Revenue Code, relating to~~  
32 ~~net operating loss carrybacks and carryovers and the years to which~~  
33 ~~the loss may be carried, is modified as follows:~~

34 ~~(1)~~  
35 ~~(d) Net operating loss carrybacks shall not be allowed for any~~  
36 ~~net operating losses attributable to taxable years beginning before~~  
37 ~~January 1, 2011.~~

38 ~~(2) A net operating loss attributable to taxable years beginning~~  
39 ~~on or after January 1, 2011, shall be a net operating loss carryback~~

1 to each of the two taxable years preceding the taxable year of the  
2 loss in lieu of the number of years provided therein.

3 ~~(A) For a net operating loss attributable to a taxable year~~  
4 ~~beginning on or after January 1, 2011, and before January 1, 2012,~~  
5 ~~the amount of carryback to any taxable year shall not exceed 50~~  
6 ~~percent of the net operating loss.~~

7 ~~(B) For a net operating loss attributable to a taxable year~~  
8 ~~beginning on or after January 1, 2012, and before January 1, 2013,~~  
9 ~~the amount of carryback to any taxable year shall not exceed 75~~  
10 ~~percent of the net operating loss.~~

11 ~~(C) For a net operating loss attributable to a taxable year~~  
12 ~~beginning on or after January 1, 2013, the amount of carryback to~~  
13 ~~any taxable year shall not exceed 100 percent of the net operating~~  
14 ~~loss.~~

15 ~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the~~  
16 ~~Internal Revenue Code, relating to special rules for REITs, and~~  
17 ~~Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code,~~  
18 ~~relating to corporate equity reduction interest loss, shall apply as~~  
19 ~~provided.~~

20 ~~(4) A net operating loss carryback shall not be carried back to~~  
21 ~~any taxable year beginning before January 1, 2009.~~

22 (e) (1) (A) For a net operating loss for any taxable year  
23 beginning on or after January 1, 1987, and before January 1, 2000,  
24 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to  
25 years to which net operating losses may be carried, is modified to  
26 substitute “five taxable years” in lieu of “20 years” except as  
27 otherwise provided in paragraphs (2), (3), and (4).

28 (B) For a net operating loss for any income year beginning on  
29 or after January 1, 2000, and before January 1, 2008, Section  
30 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years  
31 to which net operating losses may be carried, is modified to  
32 substitute “10 taxable years” in lieu of “20 taxable years.”

33 (2) For any income year beginning before January 1, 2000, in  
34 the case of a “new business,” the “five taxable years” referred to  
35 in paragraph (1) shall be modified to read as follows:

36 (A) “Eight taxable years” for a net operating loss attributable  
37 to the first taxable year of that new business.

38 (B) “Seven taxable years” for a net operating loss attributable  
39 to the second taxable year of that new business.

1 (C) "Six taxable years" for a net operating loss attributable to  
2 the third taxable year of that new business.

3 (3) For any carryover of a net operating loss for which a  
4 deduction is denied by Section 24416.3, the carryover period  
5 specified in this subdivision shall be extended as follows:

6 (A) By one year for a net operating loss attributable to taxable  
7 years beginning in 1991.

8 (B) By two years for a net operating loss attributable to taxable  
9 years beginning prior to January 1, 1991.

10 (4) The net operating loss attributable to taxable years beginning  
11 on or after January 1, 1987, and before January 1, 1994, shall be  
12 a net operating loss carryover to each of the 10 taxable years  
13 following the year of the loss if it is incurred by a corporation that  
14 was either of the following:

15 (A) Under the jurisdiction of the court in a Title 11 or similar  
16 case at any time prior to January 1, 1994. The loss carryover  
17 provided in the preceding sentence shall not apply to any loss  
18 incurred in an income year after the taxable year during which the  
19 corporation is no longer under the jurisdiction of the court in a  
20 Title 11 or similar case.

21 (B) In receipt of assets acquired in a transaction that qualifies  
22 as a tax-free reorganization under Section 368(a)(1)(G) of the  
23 Internal Revenue Code.

24 (f) For purposes of this section:

25 (1) "Eligible small business" means any trade or business that  
26 has gross receipts, less returns and allowances, of less than one  
27 million dollars (\$1,000,000) during the income year.

28 (2) Except as provided in subdivision (g), "new business" means  
29 any trade or business activity that is first commenced in this state  
30 on or after January 1, 1994.

31 (3) "Title 11 or similar case" shall have the same meaning as  
32 in Section 368(a)(3) of the Internal Revenue Code.

33 (4) In the case of any trade or business activity conducted by a  
34 partnership or an "S corporation," paragraphs (1) and (2) shall be  
35 applied to the partnership or "S corporation."

36 (g) For purposes of this section, in determining whether a trade  
37 or business activity qualifies as a new business under paragraph  
38 (2) of subdivision (e), the following rules shall apply:

39 (1) In any case where a taxpayer purchases or otherwise acquires  
40 all or any portion of the assets of an existing trade or business

1 (irrespective of the form of entity) that is doing business in this  
2 state (within the meaning of Section 23101), the trade or business  
3 thereafter conducted by the taxpayer (or any related person) shall  
4 not be treated as a new business if the aggregate fair market value  
5 of the acquired assets (including real, personal, tangible, and  
6 intangible property) used by the taxpayer (or any related person)  
7 in the conduct of its trade or business exceeds 20 percent of the  
8 aggregate fair market value of the total assets of the trade or  
9 business being conducted by the taxpayer (or any related person).

10 For purposes of this paragraph only, the following rules shall apply:

11 (A) The determination of the relative fair market values of the  
12 acquired assets and the total assets shall be made as of the last day  
13 of the first taxable year in which the taxpayer (or any related  
14 person) first uses any of the acquired trade or business assets in  
15 its business activity.

16 (B) Any acquired assets that constituted property described in  
17 Section 1221(1) of the Internal Revenue Code in the hands of the  
18 transferor shall not be treated as assets acquired from an existing  
19 trade or business, unless those assets also constitute property  
20 described in Section 1221(1) of the Internal Revenue Code in the  
21 hands of the acquiring taxpayer (or related person).

22 (2) In any case where a taxpayer (or any related person) is  
23 engaged in one or more trade or business activities in this state, or  
24 has been engaged in one or more trade or business activities in this  
25 state within the preceding 36 months (“prior trade or business  
26 activity”), and thereafter commences an additional trade or business  
27 activity in this state, the additional trade or business activity shall  
28 only be treated as a new business if the additional trade or business  
29 activity is classified under a different division of the Standard  
30 Industrial Classification (SIC) Manual published by the United  
31 States Office of Management and Budget, 1987 edition, than are  
32 any of the taxpayer’s (or any related person’s) current or prior  
33 trade or business activities.

34 (3) In any case where a taxpayer, including all related persons,  
35 is engaged in trade or business activities wholly outside of this  
36 state and the taxpayer first commences doing business in this state  
37 (within the meaning of Section 23101) after December 31, 1993  
38 (other than by purchase or other acquisition described in paragraph  
39 (1)), the trade or business activity shall be treated as a new business  
40 under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) "Related person" shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) "Acquire" shall include any transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term "new business" shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) "Biopharmaceutical activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any taxable year that may be carried forward to another taxable year.

(2) The amount of any loss carry forward that may be deducted in any taxable year.

(i) The provisions of Section 172(b)(1)(D) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(l) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

*SEC. 7. Section 24416.9 of the Revenue and Taxation Code is amended to read:*

24416.9. (a) Notwithstanding Sections 24416, 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2008, and before January 1, 2010.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(2) By two years, for losses incurred in taxable years beginning before January 1, 2008.

~~(c) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2011.~~

~~(d)~~

(c) The provisions of this section shall not apply to a taxpayer with income subject to tax under this part of less than five hundred thousand dollars (\$500,000) for the taxable year.

1     *SEC. 8. Section 24416.10 of the Revenue and Taxation Code*  
2     *is amended to read:*

3     24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4,  
4     24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss  
5     attributable to a taxable year beginning on or after January 1, 2008,  
6     shall be a net operating carryover to each of the 20 taxable years  
7     following the year of the loss, ~~and a net operating loss attributable~~  
8     ~~to a taxable year beginning on or after January 1, 2011, shall also~~  
9     ~~be a net operating loss carryback to each of the two taxable years~~  
10    ~~preceding the taxable year of loss.~~

11    *SEC. 9. Section 25128.5 of the Revenue and Taxation Code,*  
12    *as added by Section 11 of Chapter 10 of the 3rd Extraordinary*  
13    *Session of the Statutes of 2009, is amended to read:*

14    25128.5. (a) Notwithstanding Section 38006, any apportioning  
15    trade or business, other than an apportioning trade or business  
16    described in subdivision (b) of Section 25128, may make an  
17    irrevocable ~~annual~~ election on an original timely filed return, in  
18    the manner and form prescribed by the Franchise Tax Board to  
19    apportion its income in accordance with this section, and not in  
20    accordance with Section 25128. *Each contract making an election*  
21    *shall be binding for a period of 84 months.*

22    (b) Notwithstanding Section 38006, for taxable years beginning  
23    on or after January 1, 2011, all business income shall be  
24    apportioned to this state by multiplying the business income by  
25    the sales factor.

26    (c) The Franchise Tax Board is authorized to issue regulations  
27    necessary or appropriate regarding the making of an election under  
28    this section, including regulations that are consistent with rules  
29    prescribed for making an election under Section 25113.

30    ~~SEC. 3. Section 17053.91 is added to the Revenue and Taxation~~  
31    ~~Code, to read:~~

32    ~~17053.91. (a) (1) There shall be allowed to a qualified person~~  
33    ~~as a credit against the "net tax" as defined in Section 17039, an~~  
34    ~~amount equal to that portion of sales tax reimbursement paid to a~~  
35    ~~retailer or use tax paid on a purchase of tangible personal property~~  
36    ~~that is placed in service in this state, equal to 5 percent of the gross~~  
37    ~~receipts or sales price on transactions described in subparagraphs~~  
38    ~~(A) and (B), occurring between January 1, 2010, and January 1,~~  
39    ~~2013, that are subject to tax under Part 1 (commencing with Section~~  
40    ~~6351) of Division 2.~~

1     ~~(A) Tangible personal property is purchased by a qualified~~  
2 ~~person for use primarily in any stage of the manufacturing,~~  
3 ~~processing, refining, fabricating, or recycling of property,~~  
4 ~~beginning at the point any raw materials are received by the~~  
5 ~~qualified person and introduced into the process and ending at the~~  
6 ~~point at which the manufacturing, processing, refining, fabricating,~~  
7 ~~or recycling has altered property to its completed form, including~~  
8 ~~packaging, if required.~~

9     ~~(B) Tangible personal property is purchased for use by a~~  
10 ~~contractor purchasing that property for use in the performance of~~  
11 ~~a construction contract for the qualified person who will use the~~  
12 ~~property as an integral part of the manufacturing, processing,~~  
13 ~~refining, fabricating, or recycling process, or as a storage facility~~  
14 ~~for use in connection with the manufacturing process.~~

15     ~~(2) There shall be allowed to a qualified person as a credit~~  
16 ~~against the “net tax” as defined in Section 17039 an amount equal~~  
17 ~~to that portion of sales tax reimbursement paid to a retailer or use~~  
18 ~~tax paid on a purchase of tangible personal property that is placed~~  
19 ~~in service in this state, equal to 6 percent of the gross receipts or~~  
20 ~~sales price on transactions described in subparagraphs (A) and (B),~~  
21 ~~occurring between January 1, 2010, and January 1, 2013, that are~~  
22 ~~subject to tax under Part 1 (commencing with Section 6351) of~~  
23 ~~Division 2.~~

24     ~~(A) Sustainable development equipment investments of tangible~~  
25 ~~personal property is purchased by a qualified person for use~~  
26 ~~primarily in any stage of the manufacturing, processing, refining,~~  
27 ~~fabricating, or recycling of property beginning at the point any~~  
28 ~~raw materials are received by the qualified person and introduced~~  
29 ~~into the process and ending at the point at which the manufacturing,~~  
30 ~~processing, refining, fabricating, or recycling has altered property~~  
31 ~~to its completed form, including packaging, if required.~~

32     ~~(B) Tangible personal property is purchased by a qualified~~  
33 ~~person and used primarily during the research and development~~  
34 ~~process on qualified research.~~

35     ~~(b) The amount of any credit allowed under subdivision (a) shall~~  
36 ~~be applied in equal amounts over three successive taxable years~~  
37 ~~beginning with the first taxable year beginning on or after January~~  
38 ~~1, 2013.~~

39     ~~(c) For purposes of this section:~~



1     ~~(1) “Fabricating” means to make, build, create, produce, or~~  
2 ~~assemble components or property to work in a new or different~~  
3 ~~manner.~~

4     ~~(2) “Manufacturing” means the activity of converting or~~  
5 ~~conditioning property by changing the form, composition, quality,~~  
6 ~~or character of the property for ultimate sale at retail or use in the~~  
7 ~~manufacturing of a product to be ultimately sold at retail.~~  
8 ~~Manufacturing includes any improvements to tangible personal~~  
9 ~~property that result in a greater service life or greater functionality~~  
10 ~~than that of the original property.~~

11     ~~(3) “Primarily” means tangible personal property used 50 percent~~  
12 ~~or more of the time in an activity described in subdivision (a).~~

13     ~~(4) “Process” means the period beginning at the point at which~~  
14 ~~any raw materials are received by the qualified person and~~  
15 ~~introduced into the manufacturing, processing, refining, fabricating,~~  
16 ~~or recycling activity of the qualified person and ending at the point~~  
17 ~~at which the manufacturing, processing, refining, fabricating, or~~  
18 ~~recycling activity of the qualified person has altered tangible~~  
19 ~~personal property to its completed form, including packaging, if~~  
20 ~~required. Raw materials shall be considered to have been~~  
21 ~~introduced into the process when the raw materials are stored on~~  
22 ~~the same premises where the qualified person’s manufacturing,~~  
23 ~~processing, refining, or recycling activity is conducted. Raw~~  
24 ~~materials that are stored on premises other than where the qualified~~  
25 ~~person’s manufacturing, processing, refining, fabricating, or~~  
26 ~~recycling activity is conducted, shall not be considered to have~~  
27 ~~been introduced into the manufacturing, processing, refining,~~  
28 ~~fabricating, or recycling process.~~

29     ~~(5) “Processing” means the physical application of the materials~~  
30 ~~and labor necessary to modify or change the characteristics of~~  
31 ~~property.~~

32     ~~(6) “Qualified person” means either of the following:~~

33     ~~(A) A person who is engaged in those lines of business described~~  
34 ~~in Codes 3111 to 3399, inclusive, or 5112 of the North American~~  
35 ~~Industrial Classification System (NAICS) published by the United~~  
36 ~~States Office of Management and Budget (OMB), 2002 edition.~~

37     ~~(B) An affiliate of a person described in subparagraph (A)~~  
38 ~~provided that the affiliate is a member of the qualified person’s~~  
39 ~~unitary group for which a combined report is required to be filed~~

1 under Article 1 (commencing with Section 25101) of Chapter 17  
2 of Part 11.

3 (7) “Qualified research” means research that meets the  
4 requirements of Section 174 of the Internal Revenue Code.

5 (8) “Refining” means the process of converting a natural  
6 resource to an intermediate or finished product.

7 (9) “Sustainable development equipment” means qualified  
8 manufacturing or research and development equipment that meets  
9 any of the following:

10 (A) Is consistent with meeting the goals and objectives of  
11 compliance with greenhouse gas emissions standards as set forth  
12 in Division 25.5 (commencing with Section 38500) of the Health  
13 and Safety Code.

14 (B) Promotes the reduction of wasteful, inefficient, unnecessary,  
15 or uneconomic uses of energy.

16 (C) Encourages the utilization of cost-effective water use  
17 efficiency practices to curtail the waste of water and to ensure that  
18 water use does not exceed reasonable needs.

19 (D) Promotes the utilization of recycled or reusable materials  
20 in the manufacturing process.

21 (10) “Tangible personal property” includes, but is not limited  
22 to, all of the following:

23 (A) Machinery and equipment, including component parts and  
24 contrivances such as belts, shafts, moving parts, and operating  
25 structures.

26 (B) Equipment or devices used or required to operate, control,  
27 regulate, or maintain the machinery and equipment, including,  
28 without limitation, computers, data processing equipment, and  
29 computer software, together with all repair and replacement parts  
30 with a useful life of one or more years, whether purchased  
31 separately or in conjunction with a complete machine and  
32 regardless of whether the machine or component parts are  
33 assembled by the qualified person or another party.

34 (C) Property used in pollution control that meets standards  
35 established by this state or any local or regional governmental  
36 agency within this state.

37 (D) Special purpose buildings and foundations used as an  
38 integral part of the manufacturing, processing, refining, or  
39 fabricating process, or that constitute a research or storage facility  
40 used during the manufacturing process.

1 ~~(E) Fuels used or consumed in the manufacturing process.~~  
2 ~~(11) “Tangible personal property” does not include any of the~~  
3 ~~following:~~

4 ~~(A) Consumables with a normal useful life of less than one year,~~  
5 ~~except as provided in subparagraph (E) of paragraph (10):~~

6 ~~(B) Furniture, inventory, and equipment used in the extraction~~  
7 ~~process, or equipment used to store finished products that have~~  
8 ~~completed the manufacturing process:~~

9 ~~(C) Buildings or components of buildings used solely for~~  
10 ~~warehousing purposes after completion of the manufacturing~~  
11 ~~process:~~

12 ~~(D) Property that is used primarily in administration, general~~  
13 ~~management, or marketing:~~

14 ~~(E) Property that, within one year from the date of purchase, is~~  
15 ~~either removed from California, converted from a use described~~  
16 ~~in subdivision (a) to some other use not described in subdivision~~  
17 ~~(a), or used in a manner not described in subdivision (a):~~

18 ~~(d) In the case where the credit otherwise allowed under this~~  
19 ~~section exceeds the “net tax” for the taxable year, that portion of~~  
20 ~~the credit that exceeds the “net tax” may be carried over to reduce~~  
21 ~~the net tax in the following taxable year, and the succeeding four~~  
22 ~~taxable years if necessary, until the credit is exhausted:~~

23 ~~(e) This section shall remain in effect only until December 1,~~  
24 ~~2016, and as of that date is repealed.~~

25 ~~SEC. 4. Section 23649.1 is added to the Revenue and Taxation~~  
26 ~~Code, to read:~~

27 ~~23649.1. (a) (1) There shall be allowed to a qualified person~~  
28 ~~as a credit against the “tax” as defined in Section 23036, an amount~~  
29 ~~equal to that portion of sales tax reimbursement paid to a retailer~~  
30 ~~or use tax paid on a purchase of tangible personal property that is~~  
31 ~~placed in service in this state equal to 6 percent of the gross receipts~~  
32 ~~or sales price on transactions described in subparagraphs (A) and~~  
33 ~~(B) occurring between January 1, 2010, and January 1, 2013, that~~  
34 ~~are subject to tax under Part 1 (commencing with Section 6351)~~  
35 ~~of Division 2.~~

36 ~~(A) Tangible personal property is purchased by a qualified~~  
37 ~~person for use primarily in any stage of the manufacturing,~~  
38 ~~processing, refining, fabricating, or recycling of property,~~  
39 ~~beginning at the point any raw materials are received by the~~  
40 ~~qualified person and introduced into the process and ending at the~~

1 point at which the manufacturing, processing, refining, fabricating,  
2 or recycling has altered property to its completed form, including  
3 packaging, if required.

4 ~~(B) Tangible personal property is purchased for use by a~~  
5 ~~contractor purchasing that property for use in the performance of~~  
6 ~~a construction contract for the qualified person who will use the~~  
7 ~~property as an integral part of the manufacturing, processing,~~  
8 ~~refining, fabricating, or recycling process, or as a storage facility~~  
9 ~~for use in connection with the manufacturing process.~~

10 ~~(2) There shall be allowed to a qualified person as a credit~~  
11 ~~against the “tax” as defined in Section 23036, and amount equal~~  
12 ~~to that portion of sales tax reimbursement paid to a retailer or use~~  
13 ~~tax on a purchase of tangible personal property that is placed in~~  
14 ~~service in this state, equal to 5 percent of the gross receipts or sales~~  
15 ~~price on transactions occurring between January 1, 2010, and~~  
16 ~~January 1, 2013, that are subject to tax under Part 1 (commencing~~  
17 ~~with Section 6351) of Division 2.~~

18 ~~(A) Sustainable development equipment investments of tangible~~  
19 ~~personal property purchased by a qualified person for use primarily~~  
20 ~~in any stage of the manufacturing, processing, refining, fabricating,~~  
21 ~~or recycling of property beginning at the point any raw materials~~  
22 ~~are received by the qualified person and introduced into the process~~  
23 ~~and ending at the point at which the manufacturing, processing,~~  
24 ~~refining, fabricating, or recycling has altered property to its~~  
25 ~~completed form, including packaging, if required.~~

26 ~~(B) Tangible personal property is purchased by a qualified~~  
27 ~~person and used primarily during the research and development~~  
28 ~~process on qualified research.~~

29 ~~(b) The amount of any credit allowed under subdivision (a) shall~~  
30 ~~be applied in equal amounts over three successive taxable years~~  
31 ~~beginning with the first taxable year beginning on or after January~~  
32 ~~1, 2013.~~

33 ~~(c) For purposes of this section:~~

34 ~~(1) “Fabricating” means to make, build, create, produce, or~~  
35 ~~assemble components or property to work in a new or different~~  
36 ~~manner.~~

37 ~~(2) “Manufacturing” means the activity of converting or~~  
38 ~~conditioning property by changing the form, composition, quality,~~  
39 ~~or character of the property for ultimate sale at retail or use in the~~  
40 ~~manufacturing of a product to be ultimately sold at retail.~~

1 Manufacturing includes any improvements to tangible personal  
2 property that result in a greater service life or greater functionality  
3 than that of the original property.

4 (3) “Primarily” means tangible personal property used 50 percent  
5 or more of the time in an activity described in subdivision (a).

6 (4) “Process” means the period beginning at the point at which  
7 any raw materials are received by the qualified person and  
8 introduced into the manufacturing, processing, refining, fabricating,  
9 or recycling activity of the qualified person and ending at the point  
10 at which the manufacturing, processing, refining, fabricating, or  
11 recycling activity of the qualified person has altered tangible  
12 personal property to its completed form, including packaging, if  
13 required. Raw materials shall be considered to have been  
14 introduced into the process when the raw materials are stored on  
15 the same premises where the qualified person’s manufacturing,  
16 processing, refining, or recycling activity is conducted. Raw  
17 materials that are stored on premises other than where the qualified  
18 person’s manufacturing, processing, refining, fabricating, or  
19 recycling activity is conducted, shall not be considered to have  
20 been introduced into the manufacturing, processing, refining,  
21 fabricating, or recycling process.

22 (5) “Processing” means the physical application of the materials  
23 and labor necessary to modify or change the characteristics of  
24 property.

25 (6) “Qualified person” means either of the following:

26 (A) A person who is engaged in those lines of business described  
27 in Codes 3111 to 3399, inclusive, or 5112 of the North American  
28 Industrial Classification System (NAICS) published by the United  
29 States Office of Management and Budget (OMB), 2002 edition.

30 (B) An affiliate of a person described in subparagraph (A)  
31 provided that the affiliate is a member of the qualified person’s  
32 unitary group for which a combined report is required to be filed  
33 under Article 1 (commencing with Section 25101) of Chapter 17  
34 of Part 11.

35 (7) “Qualified research” means research that meets the  
36 requirements of Section 174 of the Internal Revenue Code.

37 (8) “Refining” means the process of converting a natural  
38 resource to an intermediate or finished product.

1     ~~(9) “Sustainable development equipment” means qualified~~  
2 ~~manufacturing or research and development equipment that meets~~  
3 ~~any of the following:~~

4     ~~(A) Is consistent with meeting the goals and objectives of~~  
5 ~~compliance with greenhouse gas emissions standards as set forth~~  
6 ~~in Division 25.5 (commencing with Section 38500) of the Health~~  
7 ~~and Safety Code.~~

8     ~~(B) Promotes the reduction of wasteful, inefficient, unnecessary,~~  
9 ~~or uneconomic uses of energy.~~

10    ~~(C) Encourages the utilization of cost-effective water use~~  
11 ~~efficiency practices to curtail the waste of water and to ensure that~~  
12 ~~water use does not exceed reasonable needs.~~

13    ~~(D) Promotes the utilization of recycled or reusable materials~~  
14 ~~in the manufacturing process.~~

15    ~~(10) “Tangible personal property” includes, but is not limited~~  
16 ~~to, all of the following:~~

17    ~~(A) Machinery and equipment, including component parts and~~  
18 ~~contrivances such as belts, shafts, moving parts, and operating~~  
19 ~~structures.~~

20    ~~(B) Equipment or devices used or required to operate, control,~~  
21 ~~regulate, or maintain the machinery and equipment, including,~~  
22 ~~without limitation, computers, data processing equipment, and~~  
23 ~~computer software, together with all repair and replacement parts~~  
24 ~~with a useful life of one or more years, whether purchased~~  
25 ~~separately or in conjunction with a complete machine and~~  
26 ~~regardless of whether the machine or component parts are~~  
27 ~~assembled by the qualified person or another party.~~

28    ~~(C) Property used in pollution control that meets standards~~  
29 ~~established by this state or any local or regional governmental~~  
30 ~~agency within this state.~~

31    ~~(D) Special purpose buildings and foundations used as an~~  
32 ~~integral part of the manufacturing, processing, refining, or~~  
33 ~~fabricating process, or that constitute a research or storage facility~~  
34 ~~used during the manufacturing process.~~

35    ~~(E) Fuels used or consumed in the manufacturing process.~~

36    ~~(11) “Tangible personal property” does not include any of the~~  
37 ~~following:~~

38    ~~(A) Consumables with a normal useful life of less than one year,~~  
39 ~~except as provided in subparagraph (E) of paragraph (10).~~

1     ~~(B) Furniture, inventory, and equipment used in the extraction~~  
2     ~~process, or equipment used to store finished products that have~~  
3     ~~completed the manufacturing process.~~

4     ~~(C) Buildings or components of buildings used solely for~~  
5     ~~warehousing purposes after completion of the manufacturing~~  
6     ~~process.~~

7     ~~(D) Personal property that is used primarily in administration,~~  
8     ~~general management, or marketing.~~

9     ~~(E) Property that, within one year from the date of purchase, is~~  
10    ~~either removed from California, converted from a use described~~  
11    ~~in subdivision (a), to some other use not described in subdivision~~  
12    ~~(a), or used in a manner not described in subdivision (a) or (b).~~

13    ~~(d) In the case where the credit otherwise allowed under this~~  
14    ~~section exceeds the “tax” for the taxable year, that portion of the~~  
15    ~~credit that exceeds the “tax” may be carried over to reduce the tax~~  
16    ~~in the following taxable year, and the succeeding four taxable years~~  
17    ~~if necessary, until the credit is exhausted.~~

18    ~~(e) This section shall remain in effect only until December 1,~~  
19    ~~2016, and as of that date is repealed.~~

20    ~~SEC. 5.~~

21    ~~SEC. 10.~~ This act provides for a tax levy within the meaning  
22    of Article IV of the Constitution and shall go into immediate effect.